IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.85 OF 2003

Baburao Marutrao Mane & ors. : Appellants.

versus

Ramchandra Balasaheb Mane & ors.: Respondents.

ALONG WITH

SECOND APPEAL NO.65 OF 2003.

Lata Baburao Mane & anr. : Appellants.

versus

Ramchandra Balasaheb Mane : Respondent.

Mr.G.S.Godbole for the appellants.

Mr.N.V.Walawalkar with Mr.Rahul Kate for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 27th APRIL 2005.

COMMON JUDGMENT :-

1. Heard advocate Mr.Godbole for the appellants in both the appeals and advocate

Mr.Walawalkar for the respondents in both the appeals. It appears from the Roznama that both the appeals were to be heard and decided at the stage of admission. Mr.Godbole was asked by me, when he opened his arguments, as to what are the substantial questions of law involved and he referred to Ground Nos. (A); (F) and (G) in the memo of appeal, which are as under :-

A) Whether the Courts below were justified in holding that Ramchandra Balasaheb Mane was the legally adopted son of Krishnabai particularly when, admittedly, he was a 96 Kuli Maratha and taking a son of daughter in adoption was prohibited.

F) Whether the Courts below were justified in completely overlooking that the Respondent No.1 herein had moved an Application for Amendment to the effect that the parties are not 96 Kuli Maratha and the said Application for amendment had been rejected and this order has never been challenged by the Respondents. In such a situation, Respondent No.1 was estopped from contending that the parties

are not 96 Kuli Maratha and hence, alleged adoption was void ab-initio.

G) Whether the Courts below failed to note that there was sufficient evidence on record indicating that the parties were Kshatriya Marathas i.e. 96 Kuli Maratha and there was neither a pleading nor any evidence adduced by the Respondent No.1 that the parties are of Maratha (Shudra) Caste.

2. These two appeals arise out of the judgment in two suits, that is, before the Civil Judge, Junior Division, Dahiwadi, two suits were pending bearing Regular Civil Suit Nos.203 of 1987 and 73 of 1988. [These two suits are hereinafter referred to as the first suit and the second suit respectively]. The first suit was filed by the Lata Baburao Mane and her father Baburao Marutrao Mane against Ramchandra Balasaheb Mane and, the second suit was filed by Ramchandra Mane against Baburao Mane and ors. The first suit filed by Lata Mane was for permanent injunction. The trial Court by its judgment and decree dated 9-4-1999 dismissed the

first suit i.e. Suit No.203/87 which was for injunction and decreed the second suit i.e. Suit No.73/88 which was for partition. Two appeals came to be filed against the said judgment and decree before the Additional District Judge, Satara vide Regular Civil Appeal No.161 of 1999 arising out of a decree for partition and vide Regular Civil Appeal No.162 of 1999 arising out of a dismissal of the suit for injunction. The appellate Court dismissed both these appeal. Hence these two separate appeals. Aggrieved party is obviously the present appellants, because their suit for permanent injunction was dismissed and, the respondent's suit for partition was decreed.

3. The dispute substantially relates to the adoption of Ramchandra Mane by Krishnabai. According to Mr.Godbole, Mane family is 96 Kuli Maratha and, therefore, they are Kshatriyas and, daughter's son could not be taken in adoption and, therefore, this adoption is void ab-initio and, therefore, Mr.Godbole carved out the aforesaid three substantial questions of law as the basis for his submissions.

4. I heard Mr.Godbole, appearing for the appellants and Mr.Walawalkar, appearing for the respondents. They took me through the entire records, evidence and proceedings and, also relied upon certain authorities in support of their respective contentions.

. Before appreciating the submissions, it is necessary to find out what is the substance in the case to challenge the adoption. A Genealogical Tree was, therefore, relied upon by Mr.Godbole and, at least, so far as the Genealogical Tree is concerned, no dispute was raised by Mr.Walawalkar . I am reproducing the same as under :-

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Sursing

Niraji	Ravaji [No heirs]	Nana [No heirs]	Rushi
			Bapusaheb [died 1906]
Aba	Baba		Lalubai[widow] [died 1919]
Baba [died July 1909]		Bala [Died Feb.1909]	
		Krishnabai [widow] [died 1950]	
Nansaheb [died 1950]		Ramchandra Tanubai	Subhadra

Marutrao [adopted son.]

Baburao

Dilip Pratap Ranjana [Devayani] Vandana Lata Ujwala Sunita

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5. The main contention of Mr.Godbole was that if the parties were Kshatriyas as per law, then existing Krishnabai could not legally adopt her daughter's son. Secondly, according to him, Krishnabai had already adopted one Sakharam Mane and this fact was proved from gift deed (Exhibit 72) dated 4.1.1927. This gift deed was jointly executed by Krishnabai and her adopted son Sakharam Mane. Thirdly, he contended that the parties were Kshatriyas and, adoption of daughter's son was permissible in cases of Sudras. It was not a case of the adopted son that Mane were from Maratha community and the application for amendments in that regard by the adopted son was rejected. There was no appeal, therefore, they were now estopped from raising any such contention.

6. The second submission of Mr.Godbole was regarding allotment of share i.e. 1/2 share to the adopted son as per the decree of the trial

Court as well as the appellate court.

7. Mr.Walawalkar, appearing for the respondents, on the other hand, contended that the entire challenge by the present appellants to the adoption was rightly rejected by both the courts below after considering the overwhelming evidence and the circumstances brought on record by which it is proved that the entire family of Mane had accepted the adoption i.e. the fact of adoption; legality of adoption and, the status of the adopted son vis-a-vis the Mane family and Krishnabai and, therefore, it was not open to the appellants now to challenge that adoption. So far as allotment of 1/2 share to the adopted son by both the courts below is concerned, Mr.Walawalkar contended that, that share was properly and rightly given to the adopted son and, therefore, no interference is called.

8. It is true that the appellants have tried to raise three substantial questions of law. But the question is, whether they can be permitted to challenge the adoption. If they can be permitted, then only, the Court will be required to decide those questions and, if they cannot be

permitted, the Court need not go into those questions and, this is a case where the adoption cannot be permitted to be challenged for the following circumstances.

9. Krishnabai adopted Ramchandra - the present respondent by a registered deed of adoption in 1947. Consequent upon the adoption, Ramchandra's name was came to be recorded in respect of all the properties of Krishnabai in the revenue record. The parties, when the adoption took place in 1947, were residing in the same village and, for the first time in the year 1987-88 the challenged to the adoption came to be made by the present appellants in the aforesaid two respective suits. Therefore, this is a case where the parties/appellants, upon fully knowing about the facts of adoption; about the registered deed of adoption and, about the name of adopted son being shown as the owner of the properties, remained silent from 1947 to 1987 i.e for about 40 years long period and, then they chose to challenge the adoption. Mr.Walawalkar rightly relied upon the judgment of the Supreme

Court reported in **AIR 1969 SC 1359 [Voleti Venkata Ramarao v. Kesaparagada Bhaskararao and others]** wherein the Supreme Court found that there was a adoption under authority from husband in 1904; adoptee recognised by every member of the family as the adopted son of deceased husband; reversioner challenging validity of adoption after a lapse of fifty years on the ground that the widow was a minor at the time of adoption; all the parties to the adoption and all those who could give evidence in support of its validity not alive at the time of suit; burden lies heavily on reversioner to rebut the strong presumption in favour of validity of the adoption. The Supreme Court considered Article 512 of the Mulla's Hindu Law, 13th Edition as under :-

> "But when there is a lapse of 55 years between the adoption and its being questioned, every allowance for the absence of evidence to prove such fact must be favourably entertained. it stands to reason that after a very long term of years, and a variety of transactions of open life and conduct

upon the footing that the adoption was a valid act the burden must rest heavily upon him who challenges its validity."

10. As stated by me, the date of adoption is 24/2/1947. Soon thereafter the name of Ramchandra - the present respondent was recorded in the revenue records in respect of all the properties of Krishnabai. Krishnabai died in 1950. Till 1987-88 not a single soul in the Mane family challenged or questioned this adoption. There was complete silence for a period of 40 years in that regard by the present appellants or anyone-else in the entire Mane family. The vastness of which will be shown by the genealogical tree referred to above. Apart from that Baburao Mane, in his examination-in-chief, has admitted that defendant-Ramchandra got his name included in the revenue record after the death of Krishnabai. Then in the cross examination he admitted that Ramchandra's name was taken down in the revenue record on the basis of adoption deed. Baburao Mane was 29 years of age at the time of adoption in 1947. But he claims that he came to know about the adoption deed in the year 1985-86 and prior to that

neither he nor his father has raised any objection regarding the adoption. Further in the cross examination Baburao Mane admitted that Ramchandra - the adopted son was residing at Mhaswad since 1947 and he is maintaining himself on the income which he got from the property of his mother i.e. the property which he got from his mother. Then further Baburao Mane admitted in the cross examination that all revenue record was in the name of adopted son and he was shown as the owner of 50% of the property since 1950 and this entry is of 1950.

11. All these admissions of Baburao Mane clearly go to show that the family was not only knowing about the adoption of Ramchandra by Krishnabai in 1947 but they had accepted the fact of adoption. They had allowed the revenue record to stand in the name of Ramchandra and they had allowed that state of affairs to be continued for 40 years. Therefore, on the basis of aforesaid judgment of the Supreme Court, this is a case where very very heavy burden will be on the appellants to disprove the fact of adoption. Excepting legal submissions made, as to whether the parties were Kshatriyas or Sudras or, whether

Krishnabai could adopt daughter's son, nothing is thereon record to challenge the fact of adoption. Therefore, this so called legal submissions made by Mr.Godbole, for the appellants, in the second appeal where both the courts below went against the appellants are the questions that are not open to challenge and it is not necessary to go into that aspect.

12. The property involved is huge property. Ramchandra was exercising his right on this property. Since 1947 he had become the owner of the property and he was acting as such. The revenue records are continuously in his name. The adoption deed is a registered deed wherein it is specifically mentioned that the adoption is as per the provisions of the then prevailing Hindu Law and Customs of the community. Specific wordings in that regard in the adoption deed are:

"Adoption was done as per the rituals approved and prescribed by Hindu Dharmashastra and prevailing custom."

13. Second contention of Mr.Godbole was that before adopting Ramchandra, Krishnabai had adopted one Sakharam Mane in 1927. For that purpose he has relied upon a gift deed dated 4.1.1927. But Mr.Walawalkar, appearing for the respondent, pointed out that apart from this gift deed, there is no document with the appellants. Secondly, Mr.Walawalkar contended that there is overwhelming evidence on record to show that even after the so called gift deed, Sakharam Mane was continuously known by his earlier name i.e. name of his natural father. His educational record; revenue record, death certificate, voters' list all through out show that he was known by the natural name as son of his natural father and, there is absolutely no evidence to show that Mane had accepted Sakharam Mane as adopted son of Krishnabai. Mr.Godbole could not contradict Mr.Walawalkar in this regard. It will be clear to show that the contention of the appellants that Krishnabai had earlier adopted somebody-else is only for the sake of opposition. The appellants have failed to challenge the adoption deed on that count.

14. Both the courts below i.e. the trial

Court as well as appellate court have given concurrent findings on this question. The trial Court noted that;-

1] There is not a single instance brought on record to show that at any point of time said Sakharam was residing with his adoptive mother Krishnabai;

2] Sakharam was represented or faced himself before the society as an adoptive son of Krishnabai or Bala Mane.

3] To the contrary it is admitted fact that till his death Sakharam resided with his natural parents and his natural family. He died as Sakharam Subhadar Mane and not as Sakharam Bala Mane.

4] The death extract shows that Sakharam died by his original natural name i.e. Sakharam Subhedar Mane.

5] There is no evidence to show that Sakharam Mane was accepted as adopted son of Krishnabai by Mane family.

6] To the contrary, the ration card of Sakharam was in his original family name;

Therefore, the trial Court rightly held that the recitals in the gift deed were absolutely of no help to the appellants and no inference could be drawn that Sakharam Mane was adopted by Krishnabai.

15. In view of the aforesaid facts, all the contentions raised by Mr.Godbole for the appellants about legality and validity of adoption are required to be answered in the negative. The conduct of the appellants for a period of 40 years strongly goes against their case. Not even a single notice was issued by any of them from 1947 till 1986-87 challenging the adoption or questioning the adoption or questioning the status of Ramchandra or assertion of his right in the property of Krishnabai. The challenge is, therefore, only for the sake of challenge and to deprive the respondent/Ramchandra of the rights which he had enjoyed and he was enjoying in the property since 1947. Both the courts below, therefore, upon

considering the facts; scanning the evidence and scrutinising the record rightly rejected that contention. No interference is, therefore, called for so far as this aspect of the matter is concerned.

16. Second question that was raised by Mr.Godbole was, whether Ramchandra had 1/2 share in the property. Since I am rejecting the contention of Mr.Godbole for the aforesaid reasons, it is not necessary to refer to in the judgment as to whether the parties were Kshatriyas or Marathas or whether they were Sudras. All that chapter is closed for the appellants. They have accepted legality and validity of the adoption; the fact of adoption; the adoption deed and the mutation entries in the revenue record in favour of Ramchandra Mane for 40 long years without even grudge and grievance and, therefore, they cannot be permitted to upset the state of affairs now by raising different pleas which have already been rightly rejected by both the courts below.

17. Second question of Mr.Godbole, appearing for the appellants, was about the extent of right

which Ramchandra had in the property. For that purpose Mr.Godbole tried to contend, on the basis of Genealogy Tree, that out of four sons of Sursing, two had no issue viz. Ravaji and Nana; and Niraji was the only son who had got two sons Aba and Baba. 4th Son Rushi had one son viz. Bapusaheb who died in 1906 and his wife Lalubai died in 1919. Therefore, so far as Sursing's property is concerned, it all came back to Niraji after the death of Lalubai as reversioner. Baba and Bala died in 1909 before Lalubai's death and, therefore, Nanasaheb who died in 1950 was got entire share of Lalubai and Niraji and, Krishnabai whose husband died in 1909 would not get anything as reversioner. Therefore, at the most the adopted son Ramchandra could get only 1/4th share in the property.

18. This aspect has been considered by the trial Court in para 27 of the judgment. The trial Court held that the adoption of present defendant relates back to the father's death i.e. 1909 and the right of the adopted son Ramchandra will have to be decided from the property available in 1909. Regarding contention of the appellants that there was a partition between

Baba and Bala. There was no evidence at all. So far as record of the property is concerned, after the death of Aba's son Baba, the name of Nanasaheb came to be recorded in respect of the properties which were in possession of Aba's son Baba and after the death of her husband i.e. Bala Aba, the name of Krishnabai came to be recorded. Therefore, the branch of the appellants on one side and branch of the respondent - the adoptive son on the other side are having 1/2 share each. The trial Court also considered long standing revenue record and, awarded 1/2 share to the respondent Ramchandra - the adopted son. The appellate court also, by a reasoned judgment, upheld the findings of the trial Court and dismissed both the appeals of the present appellants. I do not find any illegality in these findings. As a result, both the present appeals are required to be dismissed. Hence the order :-

:ORDER:

Both the appeals are dismissed with costs throughout.

[D.G.DESHPANDE]

27/04/2005 JUDGE.

. After this order was pronounced, Mr.Godbole, appearing for the appellants, prayed for continuation of ad interim order. The suit was for partition. That is decreed. The partition is of agricultural land. The partition has to be effected by the Collector. That always takes time. Therefore, the Collector may proceed with further steps in partition. Only actual delivery of possession will not take till 20th July 2005. Mr.Walawalkar, appearing for the respondents, agrees to continue his statement that no third party interest will be created till 20th July 2005.

[D.G.DESHPANDE]

27/04/2005 JUDGE.